



The Self-employed team
Health and Safety Executive
1.3.78 Redgrave Court
Merton Road
Bootle L70 7HS

E-mail: selfemployed2014@hse.gsi.gov.uk

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British Safety Council response to CD273 Proposals to exempt self-employed persons from section 3(2) of the Health and Safety at Work etc. Act 1974, except those undertaking activities on a prescribed list

About the British Safety Council

The British Safety Council (BSC), founded in 1957, is one of the world's leading health, safety and environmental charities. Our vision is that no one should be injured or made ill at work.

As a charity and membership organisation, representing thousand of businesses, we have for nearly sixty years strived to keep people safe and well at work through the provision of education, training, advice and guidance and by influencing the regulation and management of health and safety.

BSC and our member organisations seek to influence the direction of health and safety regulation and in particular prevent an overly bureaucratic and risk-averse approach that impedes innovation and economic growth. We believe that sensible and proportionate management of health and safety risks is good for individuals, business and society.

We have over 6,000 corporate members operating in the UK of whom some 80% operate in the high and medium hazard sectors including construction, energy and utilities, manufacturing, oil and gas and transport and distribution. A significant number of our corporate members use the services and work closely with self-employed businesses.

***Reclaiming health and safety for all* and the reform of the regulatory framework for health and safety: BSC position**

BSC has made clear in previous submissions in response to consultations undertaken by Government and HSE that we and our members have great confidence in the integrity and effectiveness of our regulatory framework for workplace health and safety. The integrity and robustness of our regulatory framework has made a major contribution in helping to reduce the incidence and number of workplace injuries and work-related ill health occurrences since the enactment of the Health and Safety at Work etc Act 1974.

We have submitted evidence, reflecting our own and our members' knowledge, expertise and views, in response to all of the major consultations concerning health and safety undertaken by the Government and HSE over the past four years.

The Löfstedt reform proposals concerning the self employed

We welcomed the main thrust of the report produced by Professor Löfstedt containing the findings of the independent review of health and safety legislation. In our evidence to the Löfstedt review we expressed our and our members' concerns about the complexity and scale of health and safety law impacting on small business.

We did not and do not advocate that small businesses, and the self-employed in particular, should be out of the scope of health and safety law. Key for small business is easy access to comprehensible and proportionate advice and guidance that assists them in understanding and complying with those laws which affect them including the concept of 'reasonable practicability'. We were pleased to see that Professor Löfstedt supported our view.

CD273 sets out the background to various reviews undertaken over the last ten years concerning the application of health and safety law to the self employed. We acknowledged that the Löfstedt review set out a persuasive case for change concerning the applicability of the law to the self employed, specifically,

“There is a case for following a similar approach to other countries and exempting from health and safety law those self employed people (ie those who do not have any employees) whose workplace activities pose no potential risk of harm to others.”

As Professor Löfstedt made clear health and safety law should continue to apply to self employed people who employed workers and there should not be any change in the duties that others have towards a self employed person.

The proposed new regulatory approach

The BSC is concerned that the regulatory approach proposed in CD273 goes markedly beyond the rationale underlying the change recommended in the Löfstedt review. As noted by HSE in the supporting impact assessment the proposed regulatory change(removing self employed people who do not conduct an “undertaking of a prescribed description” from the scope of health and safety law)– affects some some 2 million self employed people.

The proposed approach is a radical departure from that put forward by Professor Löfstedt. No longer is it proposed to exempt the self employed whose activities posed no risk of harm to others but rather adopt a prescriptive approach listing those hazardous activities which would bring the self employed within the scope of health and safety law.

Clearly there now can be instances where self employed persons (not employing others) could undertake activities that have the potential to harm to others but would be outside of the scope of health and safety law as they do not appear in the prescribed list. This is a significant change in our regulatory approach – from goal setting to prescription – that runs counter to the philosophy underpinning the Health and Safety at Work Act 1974. It is a change that we believe erodes the framework of our system of health and safety law.

It is likely that self employed people such as drivers, mechanics, vocational trainers among many others carrying out the occupations listed in table 1 of the impact assessment could undertake activities that have the potential to harm others. Rather than helping to eliminate confusion and unnecessary complexity we could find ourselves in a position where the potential risk of self employed people harming others increases not decreases.

The proposed change focuses largely on harmful activities that could cause injury rather than those could cause injury or ill health. Many other activities not contained in the list in table 1 have the potential to harm the health to others but should these proposals go ahead will be



taken out of scope of HSWA. We are concerned at this omission and the consequences it could have for those affected by the activities of self employed not covered in table 1.

The BSC is committed to supporting reforms of our health and safety law which help reduce unnecessary bureaucracy while ensuring that the risk of injury and ill health is properly controlled. However we believe the proposed regulatory change cannot be justified on the basis of the potential costs savings to business set out in the accompanying impact assessment. The net benefit – an estimated £630k per annum – to some 2 million existing and new businesses does not justify the change.

Consequently the BSC does not support the regulatory approach set out in CD273.

In conclusion the BSC while supporting the principle of removing those self employed people whose activities do not pose the risk of harm to others from the scope of health and safety law does not support the proposed regulatory changes set out in CD273. To summarise the financial benefit that the proposed change will bring to business is negligible; there is no certainty that the new approach will help the self employed better understand their role and responsibilities concerning health and safety; and the goal setting approach that underpins the 1974 Act will be undermined.

Yours faithfully

Neal Stone

Policy and communications director